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Before the
FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Washington, D.C. 20554

In the Matter of

Policy and Rules Concerning the
Interstate, Interexchange Marketplace

Implementation of Section 254 (g) of the
Communications Act of 1934, as amended

CC Docket No. 96 - 61

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE SECRETARY OF DEFENSE

The Secretary of Defense, for the Department of Defense and as Executive Agent of the National Communications System¹, through duly authorized counsel, pursuant to Section 201 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. Section 481, and the Memorandum of Understanding between the Department of Defense and the General Services Administration dated November 27, 1950, hereby files these comments to address National

¹Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions", April 3, 1984, (49 Fed. Reg. 13471, 1984), established the National Communications System (NCS), which consists of an administrative structure involving the Executive Agent, Committee of Principals, Manager, and the telecommunications assets of the Federal organizations which are represented on the Committee of Principals. Section 1(e) of Executive Order 12472 designates the Secretary of Defense as Executive Agent of the NCS. By direction of the Executive Office of the President, the NCS member organizations (which are represented on the Committee of Principals) are: Department of Agriculture, Central Intelligence Agency, Department of Commerce, Department of Defense, Department of Energy, Federal Emergency Management Agency, General Services Administration, Department of Justice, National Aeronautics and Space Administration, the Joint Staff, Department of State, Department of Transportation, Department of Treasury, U.S. Information Agency, the Department of Veterans Affairs, Department of Health and Human Services, Department of the Interior, National Security Agency, the National Telecommunications and Information Administration and the Nuclear Regulatory Commission. The Federal Communications Commission, the United States Postal Service and the Federal Reserve Board also participate in the activities of the NCS. The vast majority of the telecommunications assets of these 23 organizations are leased from commercial communications carriers and serve the National Security and Emergency Preparedness (NS/EP) needs of the Federal government as well as State and local governments.

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Security and Emergency Preparedness (NS/EP) issues inherent in the proposed adoption of a mandatory detariffing policy for domestic services of non-dominant interexchange carriers.²

Specifically, these comments address two services now provided by non-dominant interexchange carriers, Telecommunications Services Priority (TSP) and the Government Emergency Telecommunications Service (GETS).

TELECOMMUNICATIONS SERVICES PRIORITY

The TSP system is set forth in Appendix A to Part 64 of the Commission's rules and regulations. In general, the rules authorize and mandate a system whereby circuits with NS/EP designations receive priority restoral or provisioning. Interexchange carriers have filed tariffs at the Commission for TSP. The potential elimination of these tariffs causes some concern.

TSP tariffs serve two distinct purposes. First, they serve as a clear sign that the carrier both understands and accepts the responsibilities imposed on common carriers by the Commission's TSP rules. Secondly, they establish a price for the service. The time for acknowledging and pricing is not when the requirement for a TSP invocation is urgent. One should not have to negotiate the purchase of a fire hose when the house is burning down. A better deal is likely struck before the emergency is nigh.

Arguably, contracts for TSP service could be negotiated. The problem is that there is no simple method of knowing just who is out there. The Telecommunications Act of 1996 envisions a world where there are many competitors, not all of whom will automatically be aware of the TSP rules and regulations. Accordingly, the Commission should, assuming it feels elimination

²The Secretary of Defense fully supports the Comments of the General Services Administration filed separately herein which address the interests of the Federal Executive Agencies as consumers of telecommunications services.

of TSP tariffs is appropriate³, adopt the proposal advanced by the General Services Administration to have carriers post prices for all services, including TSP, on electronic bulletin boards.

GOVERNMENT EMERGENCY TELECOMMUNICATIONS SERVICE

GETS provides NS/EP authorized personnel priority call completion over the Public Switched Network. Currently, the NCS has contracts with AT&T, SPRINT and MCI for this service.

Because the priorities afforded authorized users could have been construed as possible violations of Section 202(a) of the Communications Act⁴, the NCS wrote to the Commission asking for a declaratory ruling that the carriers providing GETS would not be in violation of the Communications Act. While the matter was pending at the Commission, the involved carriers filed GETS tariffs which the Commission permitted to go into effect. In responding to the NCS's request, the Commission stated that since the tariffs had gone into effect, the question was moot.⁵ The ruling seems to depend on the filed tariffs. Certainly, if GETS was not deemed to be in violation of Section 202(a) with tariffs, it should not be deemed to be a violation of Section 202(a) in the absence of tariffs. Nonetheless, the NCS requests that the Commission confirm that carriers providing GETS without tariffs are not in violation of the Communications Act.

³ The Commission would have to find that TSP detariffing is consistent with the public interest. Telecommunications Act of 1996, Section 401.

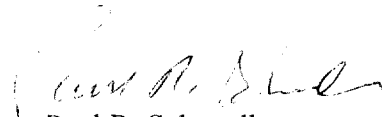
⁴Section 202(a) generally makes it unlawful for any carrier to make any unjust or unreasonable discrimination in charges, practices, etc. or to make or give any undue or unreasonable preferences to any particular class of persons.

⁵A copy of the Commission's response is attached hereto.

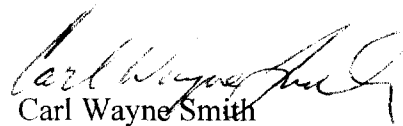
CONCLUSION

The Secretary of Defense urges the Commission to continue to take NS/EP issues into account as it implements the Telecommunications Act of 1996.

Respectfully submitted,



Paul R. Schwedler
Deputy Regulatory Counsel
(703) 607-6092



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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN REPLY REFER TO:
16008

August 30, 1995

Carl Wayne Smith, Esq.
Chief Regulatory Counsel,
Telecommunications, DoD
Office of the Manager
National Communications System
Washington, D.C. 20305-2910

Re: File No. DA 94-31
Office of the Manager, National Communications System
Request for Advice Letter Regarding National
Security and Emergency Preparedness Services

Dear Mr. Smith:

On November 29, 1993 the Office of the Manager of the National Communications System (OMNCS) requested that the Commission issue an "advice letter" stating that common carriers may provide call-by-call priorities over the public switched network (PSN) for national security and emergency preparedness (NS/EP) purposes.

A call-by-call priority system would automatically identify the NS/EP status and priority level of individual calls as they traverse the PSN. This capability could be used by a modern telecommunications system to provide special routing and other reliability features to enhance call completion of NS/EP calls during situations of network blockage.

OMNCS requested the Commission to issue a declaratory ruling that provision of call-by-call priority service does not constitute unjust or unreasonable discrimination, preference, advantage or prejudice under Section 202(a) of the Communications Act of 1934, 47 U.S.C. Section 202(a).

On January 7, 1994, the Commission issued a Public Notice (DA 94-31), entitled "Providing Call-By-Call Priorities Over the Public Switched Network". In response to the public notice, seven comments and seven reply comments were filed. These comments generally agree with the OMNCS position that a call-by-call priority system in support of NS/EP communications requirements should not be considered unreasonable under Section 202(a). However, the comments also indicated a need for additional information regarding such important issues as system development, administration, payment for service, and the relationship of a call-by-call system to other services provided by the PSN.

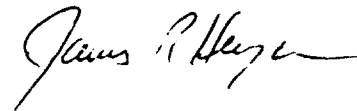
In September of 1994, OMNCS completed development of the Government Emergency Telecommunications Service (GETS). Tariffs filed with the Commission to implement GETS have gone into effect.

On March 10, 1995, in an ex parte presentation, OMNCS representatives provided a response to questions posed by FCC staff. OMNCS explained that GETS is a service developed to improve the likelihood that NS/EP emergency calls will be completed when the PSN is generally impassable due to damage or congestion. A new nationwide PSN area code (area 710) has been established for GETS and implementation by the three largest interexchange carriers (IXCs) has been completed. OMNCS has funded the costs of developing GETS and adding the 710 area code to network switches. GETS tariffs filed with the FCC by the three IXCs establish rates, terms and conditions of this service. Implementation of GETS by local exchange carriers (LECs) is in process. Currently, all GETS calls are billed to the OMNCS.

Other information provided at the ex parte meeting included a statement that authorized users use GETS during emergency situations when calls cannot be completed on the PSN. The OMNCS representatives said that their pending request does not involve priority access to the PSN by wireless users but that certain aspects of wireless access will be addressed in a separate Cellular Priority Access Service proceeding to be initiated at the Commission in the future.

As described above, call-by-call priority is a feature of the federally managed GETS program. Lawful tariffs implementing that service have gone into effect; thus, it appears that the request for declaratory ruling filed on November 29, 1993 is moot. Accordingly, pursuant to Section 1.4 of the Commission's rules, the petition for declaratory ruling is dismissed without prejudice.

Sincerely,

A handwritten signature in dark ink, appearing to read "James R. Keegan", with a stylized flourish at the end.

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau